

APPEAL NO. 030198
FILED MARCH 4, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 19, 2002. With respect to the issue before her, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the second quarter, which ran from August 10 to November 8, 2002. In his appeal, the claimant essentially argues that the hearing officer's determinations that he did not satisfy the good faith requirement and that he is not entitled to SIBs for the second quarter are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) initially argues that the claimant's appeal is untimely. In the alternative, the carrier urges affirmance.

DECISION

Affirmed, as modified.

Initially, we consider the carrier's assertion that the claimant's appeal was untimely. In his appeal, the claimant acknowledges receipt of the hearing officer's decision on December 28, 2002, five days after it was mailed. The claimant had 15 days from the date of receipt, excluding Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code, to file his appeal. The carrier argues that the 15th day after receipt of the hearing officer's decision was January 20, 2003; however, that was Martin Luther King, Jr., Day, a holiday listed in Section 662.003. Thus, the 15-day filing deadline in this case was actually January 21, 2003, the day the claimant mailed his appeal. The claimant's appeal was received well within the 20-day deadline for receipt; thus, the appeal was timely filed.

Next, we note, as did the claimant, that the hearing officer mistakenly listed the date of injury incorrectly in several places in the decision. It is undisputed that the claimant's date of injury is _____, and not May 4, 1999, as the hearing officer states. Thus, each reference to a May 4, 1999, date of injury in the decision is changed to reflect the correct date of injury, _____.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the second quarter. The hearing officer found that the claimant looked for employment commensurate with his ability to work every week of the qualifying period; however, she further determined that the claimant's efforts were insufficient to prove that he had satisfied the good faith requirement under Rule 130.102(e) by conducting a good faith job search. The hearing officer considered the evidence and found that the claimant did not make a good faith effort to obtain employment commensurate with his ability to work

during the qualifying period for the second quarter. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Rule 130.102(e) contains a number of factors which the reviewing authority may consider in evaluating the job search effort including the number and types of jobs sought, applications or resumes which document the efforts, cooperation with the Texas Rehabilitation Commission, the amount of time spent attempting to find employment, any job search plan by the injured employee, and so on. The hearing officer specifically noted that she was not persuaded that one job contact per week rose to the level of a good faith search for employment. Our review of the record reveals that the hearing officer's determination in that regard is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Thus, no sound basis exists for us to reverse that determination, or the determination that the claimant is not entitled to SIBs for the second quarter, on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer likewise did not err in determining that the claimant did not satisfy the good faith requirement pursuant to Rule 130.102(d)(1) by returning to work in a job relatively equal to the claimant's ability to work. The hearing officer "assumed for the purposes of this decision that Claimant's work for his father constituted bona fide employment." Nevertheless, the hearing officer further noted that the record indicated that the claimant "could work in a restricted capacity on a full-time basis." The hearing officer was acting within her province as the fact finder in so finding and nothing in the record reveals that the challenged determination is so against the great weight of the evidence as to compel its reversal on appeal. Cain. Accordingly, the hearing officer did not err in determining that the claimant's part-time work was not "relatively equal" to his ability to work. See Texas Workers' Compensation Commission Appeal No. 022432, decided October 31, 2002.

As modified to correctly identify the date of injury as _____, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**DOROTHY C. LEADERER
1999 BRYAN STREET
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Chris Cowan
Appeals Judge